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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/066,515	01/31/2002	Majid Zia	1-14873	3658
1678	7590	11/30/2006	EXAMINER	
MARSHALL & MELHORN FOUR SEAGATE, EIGHT FLOOR TOLEDO, OH 43604			BRINSON, PATRICK F	
			ART UNIT	PAPER NUMBER
			3754	

DATE MAILED: 11/30/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/066,515

Applicant(s)

ZIA ET AL.

Examiner

Patrick F. Brinson

Art Unit

3754

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 11 September 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 15,20-25,31-41,49,50,52 and 54-58 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 15 and 31-34 is/are allowed.
- 6) ☒ Claim(s) 20-25, 35-41, 50 52 and 54-58 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- ☐ Notice of Informal Patent Application
- ☐ Other: \_\_\_\_\_

***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

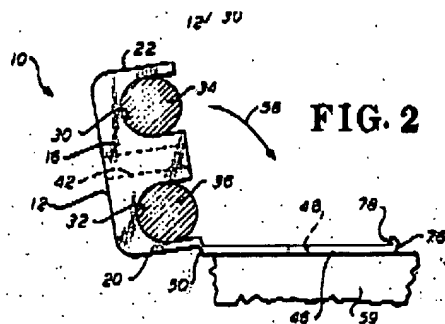
Claims 20-25 and 35-41 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. 5,916,199 to **Miles**.

The patent to **Miles** discloses a tubing device comprising a tube support, figs. 2 and 2A, comprising a curvilinear channel (60) disposed therein for receiving a piece of tubing (20) and means for holding the piece of tubing in the channel wherein the tube support comprises a first portion (50) and a second portion (52), with the first and second portions being connected by a hinge, as recited in claim 20. Each of the first and second portions include a channel, the channels aligned to form a cylindrical channel to hold the tubing therein, as recited in claims 21-23. The channel in the first portion has a greater than semi-circular cross-section and the channel in the second has a less than semi-circular cross-section, as recited in claim 25. The method of its use can be obtained, including the steps of providing a piece of flexible tubing having smooth interior walls, the tubing comprising a single piece having no adhesive on the interior surface, providing a support device (10) for the flexible tubing, the support device configured to prevent flow constriction areas from forming in the flexible

tubing and transporting fluid for medical application through the flexible tubing, as recited in claim 37.

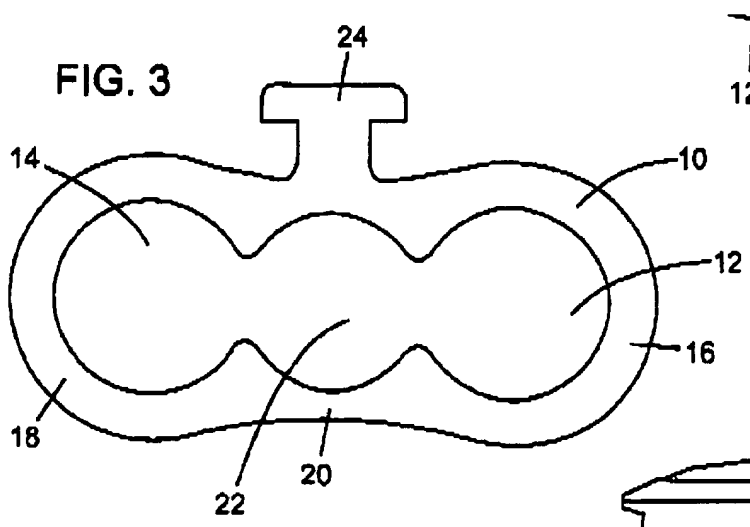
2. Claims 49, 50, 52 and 56-58 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. 3,982,304 to **Menshen**

The patent to **Menshen** discloses a tubing apparatus comprising a support member, wherein the support member is a solid rectangular block (12), at least two parallel channels (26, 28) through the solid rectangular block for retaining tubing and structure, including third opening (42) and bolt to support the weight of the tubing apparatus without substantially deforming the tubing retained by the support member, as recited in claims 49 and 50. Each channel includes a single piece of flexible tubular members or wires represented by elements (34 and 36). The third opening (38) is perpendicular to the two channels, as recited in claim 52. It is disclosed that the block is formed of a suitably flexible plastic material such as polypropylene, so it could be rigid or semi-rigid.



3. Claims 54 and 55 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. 6,311,936 to **Herr et al.**

The patent to **Herr et al.** discloses a flexible support member, fig. 3, (10), which has a pair of channels (12 and 14) formed proximate the ends of the flexible support member, as recited in claim 54, and a structure to support the weight of the tubing device comprising a curved portion of the support member extending between the channels. (see below)



*Response to Amendment*

4. Applicant agrees that **Miles** does disclose a curvilinear channel, but disagrees that the channel is of a substantially circular cross-section, and points to the specification that states that the two members together form a substantially circular

cross-section. It should be pointed out that **Miles** also provides for both upper member (52) and lower member (50) to encircle, the circular, tubular member (20). As can be seen from figs. 2 and 3 the bottom channel (60) has a U-shaped cross-section to form the bottom half of the circular cross-section and the upper portion (52) has a substantial upside down U-shaped cross section so that when the two are positioned together, covering the tubular member (20) the device has a circular shaped cross section. Applicant argues that the particular figure cited in the reference to **Herr et al.** does not disclose a curved portion of the flexible member between the channels. It should be noted, however that figs. 2 and 3 do disclose a tab (24) that is formed from curving of material from the body and the tab is used to support the device on a washing machine. In response to applicant's argument that stranded cable of the Stewart et al. reference is not tubing, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. However, previously cited **Menshen** reference discloses a solid, rectangular shape block including two channels, each supporting a tubular member and a third hold that provides support to the device when a bolt is placed therethrough.

***Allowable Subject Matter***

5. Claim 15 and 31-34 are allowed.

***Conclusion***

6. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to **Patrick F. Brinson** whose telephone number is (571) 272-4897. The examiner can normally be reached on M-F 7:30-3:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, **Kevin P. Shaver** can be reached on (571) 272-4720. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Patrick F. Brinson  
Primary Examiner  
Art Unit 3754

P. F. Brinson  
November 27, 2006